IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6322 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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MANSUKH VRAJLAL RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR PREMAL JOSHI ASST.GOVT. PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India, challenging the order of detention, vide Annexure 'A' dated 11.6.1999 passed under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the PASA]. The detenu was detained by the aforesaid order on the ground of detentions which are annexed to the petition, vide Annexure 'B'. It appears that the detenu was indulging in storing and transporting prohibited liquor, beating of innocent persons of the locality and the passer-by.

2. In the instant case, it is not necessary to consider the grounds of detention as it appears from the record that the representation forwarded by the petitioner has not been considered. Ground 'J' of the memo of petition reads as under :-

"The petitioner respectfully states that the advocate of the petitioner has made a representation dated 11.8.99 addressed to the detaining authority. Annexed hereto and marked as Annexure 'C' is a copy of the representation dated 11.8.99 [23.2.99 (sic)]

It is submitted that it is incumbent upon the detaining authority satisfy as to when the said representation was forwarded to the State Governemnt. The State Govt. to satisfy this Hon'ble Court as to when they received the copy of the said representation from the State Government and how it was dealt with and considered. The State Government has to satisfy this Hon'ble Court that the representation dated 10.8.99 received by them has been considered as expeditiously as possible and without any undue delay. In failing to do so, the continued detention of the petitioner becomes violative of Art. 22(5) of the Constitution of India.

4. In this matter, neither the detaining authority nor the State has filed any reply to the detenu's aforesaid contention. A Division Bench of this Court in the case of DHANIBEN M TANDEL vs. UNION OF INDIA reported in 1997 (1) GLH 545 had an occasion to consider non-filing of returns in the matter of detention. The Division Bench has deprecated the method of showing files before the Court.

5. In the instant case, as the contentions raised by the petitioner has not been denied by the detaining authority or by the State, the continued detention of the detenu is required to be held as bad and illegal. Therefore, the detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ----------